BURN'S

JUSTICE OF THE PEACE

AND

Parish Officer.

THE TWENTY-NINTH EDITION,

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THE REST OF THE WORK

By THOMAS CHITTY, Esq.,

OF THE INNER TEMPLE.

IN SIX VOLUMES.

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THE

JUSTICE OF THE PEACE

AND

PARISH OFFICER.

Machinery, Malicious Injuries to, *see post*, "*Malicious Injuries to Property;*" "*Hundred,*" Vol. III.—Exportation of, *see post*, "*Manufactures.*"

Madmen. *See* "*Lunatics,*" Vol. III.

Magistrates. *See* "*Justices of the Peace,*" Vol. III.

Mahometan, Evidence of, *see* "*Evidence,*" Vol. II., *post*, "*Oaths.*"

Mail, Stealing, &c., from, *see post*, "*Post Office;*" *see also tit.* "*Carriers,*" Vol. I.

Maim.

MAIM is such a hurt of any part of a man's body, whereby he is rendered less able, in fighting, either to defend himself or annoy his adversary: for the members of every subject are under the safeguard and protection of the law, to the end a man may serve his king and country when occasion shall be offered. (1 *Hawk. c.* 44, *s.* 1; 4 *Bla. Com.* 205.) What it is.

The cutting off, or disabling, or weakening a man's hand or finger, or striking out his eye or foretooth, or castrating him, are said to be maims, but the cutting off his ear, or nose, was not esteemed as a maim at the common law, because it does not weaken, but only disfigures him. (1 *Hawk. c.* 44, *s.* 2.) What not a maim

A person who maims himself, that he may have the more colour to beg, may be indicted and fined. (1 *Inst.* 127.) Cheats by maim

Maim.

And by the like reason a person who disables himself, that he may not be pressed for a soldier.

And so of the party by whom it was effected at the other's desire. (1 *Hale*, 412; 1 *East's P. C.* 396; 1 *Inst.* 127.)

Castration.

It is said, anciently castration was punished with death, and other maims with the loss of member for member. but afterwards, no maim was punished in any case with the loss of life or member, but only with fine and imprisonment. (1 *Hawk. c.* 44, *s.* 2.)

Malicious injuries.

See further, as to offence of maliciously maiming a person, *title "Malicious Injuries to the Person," post.*

Maiming cattle.

As to maiming cattle, *see title "Cattle and Animals,"* Vol. I.

Maintenance.

BUYING *of titles* belongeth not to this place, but is treated of under a title of its own, viz *"Buying of Titles,"* Vol. I.

I. *Of Maintenance in General*, p. 2.

[1 *Edw.* III. *st.* 2, *c.* 14; 20 *Edw.* III. *c.* 4; 1 *Rich.* II. *c.* 4; 32 *Hen.* VIII. *c.* 9.]

II. *Of Champerty in particular*, p. 4.

[3 *Edw.* I. *c.* 25: 28 *Edw.* I. *c.* 11; 33 *Edw.* I. *st.* 2; 33 *Edw.* I. *st.* 3; 1 *Rich.* II. *c.* 9; 31 *Eliz. c.* 5.]

III. *Of Embracery of Jurors*, p. 5.

[32 *Hen.* VIII. *c.* 9; 6 *Geo.* IV. *c.* 50, *s.* 61.]

I. Of Maintenance in General.

Maintenance, what.

Maintenance (*manu tenere*) *is an unlawful taking in hand or upholding of quarrels or suits to the disturbance or hindrance of common right.* (1 *Hawk. c.* 83, *s.* 1; 4 *Blac. Com.* 134.)

And it is twofold, technically termed *ruralis et curialis.*

In the country.

One in the *country;* as where one assists another in his pretensions to certain lands, by taking or holding the possession of them for him by force or subtlety; or where one stirs up quarrels and suits in the country, in relation to matters wherein he is no way concerned: and this kind of maintenance is punishable at the queen's suit by fine and imprisonment, whether the matter in dispute any way depended in plea or not. but it is said not to be actionable. (*Id. s.* 1, 2.)

In courts of justice.

Another in the *courts of justice;* where one *officiously* intermeddles in a suit depending in any such court, which no way belongs to him, by assisting either party with money or otherwise in the prosecution or defence of any such suit. (1 *Hawk. c.* 83, *s.* 1, 2.)

Of this second kind of maintenance, there are three species.—

First, where one maintains another, without any contract to have part of the thing in suit; which generally goes under the common name of *maintenance.*

Secondly, where one maintains one side to have part of the thing in suit; which is called *champerty.*

Thirdly, where one laboureth a jury; which is called *embracery.* (*Id. s.* 3.)

But it seemeth to be agreed, that wherever any persons claim a common interest in the same thing, as in a way, churchyard, or common, by the same title, they may maintain one another in a suit relating to the same. (1 *Hawk. c.* 83, *s.* 18. *And see Williamson* v. *Henley*, 6 *Bing.* 299; 3 *Moo. & P.* 731; *see also Jacob's Rep.* 427; *Gwyllim's Tithe Cases*, 1381.) 1. *Maintenance in general.*

Also, that whoever is any way of kin or affinity to the party may counsel and assist him, but that he cannot justify the laying out any of his own money in the cause, unless he be either father, son, or heir apparent. (*Id. s.* 20.)

Also, that any one in charity may lawfully give money to a poor man, to enable him to carry on his suit. (*Id. s.* 26; 4 *Black. Com.* 135; *Vin. Ab. Maintenance*, 2; *and see further*, 1 *Russ. on Cr.* 176; 6 *Bing.* 299; 3 *Moo. & P.* 731; *Bell* v. *Smith*, 7 *D. & R.* 846; 5 *B. & C.* 188, *S. C.*)

It has been held that an agreement not to oppose a railway bill in parliament is not illegal. (*See Edwards* v. *Grand Junction Railway*, 7 *Sim.* 337, *affirming* 1 *Myl. & C.* 650; *Simpson* v. *Lord Howden*, 1 *Jurist*, 703, *reversing S. C. in* 1 *Reeve*, 583.)

How punishable by the common law

It seemeth that all maintenance is not only *malum prohibitum* by statute but is also *malum in se*, and strictly prohibited by the common law, as having a manifest tendency to oppression; and, therefore, it is said that all offenders of this kind are not only liable to an action of maintenance at the suit of the party grieved, wherein they shall render such damages as shall be answerable to the injury done to the plaintiff, but also that they may be indicted as offenders against public justice, and adjudged thereupon to such fine and imprisonment as shall be agreeable to the circumstances of the offence. Also, it seemeth that a court of record may commit a man for an act of maintenance done in the face of the court; (2 *Inst.* 212; 1 *Hawk. c.* 83, *s.* 36; *and see Pechell* v. *Watson*, 8 *M. & Wels* 691;) wherein the plaintiff recovered damages in an action for maintenance; and see the form of declaration there, which was held good after several objections raised against it.

How punishable by statute.

By stat. 1 Edw. III. st. 2, c. 14, no person shall take upon him to maintain quarrels, nor parties in the country, to the disturbance of the common law.

By stat. 20 Edw. III. c. 4, none shall take in hand quarrels other than their own, nor the same maintain, by them nor by other, for gift, promise, amity, favour, doubt, fear, nor other cause, in disturbance of law and hindrance of right.

By stat. 1 Rich II. c. 4, none shall take or sustain any quarrel by maintenance in the country, nor elsewhere, on pain, if he is a great officer, as the king by the advice of the lords shall ordain: if he is a lesser officer, he shall forfeit his office, and be imprisoned and ransomed at the king's will, and all other persons, on pain of imprisonment and ransom at the king's will.

And by stat. 32 Hen. VIII. c. 9, s. 3, no person shall unlawfully maintain or procure any unlawful maintenance in any action, demand, or complaint, in any court having power to hold plea of lands; nor shall unlawfully retain any person for maintenance of any plea to the disturbance or hindrance of justice; on pain of 10*l.*, half to the king, and half to him that shall sue within one year

By the same act, section 5, proclamation of the statutes of maintenance and champerty, &c., is to be made at the assizes.

Unlawfully Maintain.]—It seemeth that in an information on this statute, it is not sufficient to say that the defendant maintained the party, without adding that he did it *unlawfully*. (1 *Hawk. c.* 83, *s.* 45.)

Having Power to hold Plea of Lands.]—It is said to have been adjudged, that maintenance of a suit in a spiritual court is neither within this nor any other statute concerning maintenance. (*Id. c.* 83, *s.* 46.)

To hold Plea.]—It hath been holden that in an information on this statute, it is necessary to show that a plea was depending; and, therefore,

1. *Maintenance in general.*

that it is not sufficient to say that a bill was exhibited. (1 *Hawk. c.* 83, *s.* 47.)

These statutes are only declaratory of the common law, with additional penalties. (*Pechell* v. *Watson*, 8 *M. & W.* 691.)

The statutes declaratory only of the common law.

II. Of Champerty in particular.

What it is.

Champerty (from *campi parte*) is the *unlawful maintenance of a suit, in consideration of some bargain to have part of the lands or thing in dispute, or part of the gains.* (1 *Hawk. c.* 84, *s.* 1; 33 Edw. I. st. 2; *and see Williams* v. *Protheroe*, 5 *Bing.* 309.)

Every champerty is maintenance, but every maintenance is not champerty; for champerty is but a *species* of maintenance, which is the *genus.* (2 *Inst.* 208.)

Where it was agreed between the seller and buyer of an estate, that the purchaser, bearing the expense of certain suits commenced by the seller against an occupier for arrears of rent, should have the rent to be so recovered, and any sum that could be recovered for dilapidations; and that the purchaser, bearing the expenses, might use the seller's name in actions he might think fit to commence against the occupier for arrears of rent or dilapidations: it was held, such agreement was not void as savouring of champerty. (*Williams* v. *Protheroe*, 5 *Bing.* 309; 2 *M. & P.* 779, *S. C.*)

But where a party covenants to use his best exertions and influence to procure evidence, whereby A. B. would be enabled to recover a large sum of money, in consideration of A. B. paying to him one eighth share of the sum so recovered, this was held clearly to amount to the offence of champerty, for it was a contract for the purchase of an interest in a lawsuit, by the party having stipulated, not, indeed, to pay money for such interest, but to do what was still more calculated to prevent the fair and impartial administration of justice, namely, to procure evidence to support the litigated claim of A. B. (*Stanley* v. *Jones*, 7 *Bing.* 369; 5 *Moo. & P.* 193, *S. C.*)

Dealing with client.

In a late case, agreements entered into between an attorney and his client, for the purchase by the attorney, at an under price, of estates to which the client had good title, but of which he was not in possession, were set aside for fraud and maintenance. (*Jones* v. *Thomas*, 2 *Y. & Coll.* 428.)

How punishable by the common law.

Champerty was an offence at the common law, and as such is punishable in like manner as hath been expressed in treating of maintenance in general. (2 *Inst.* 208.)

How punishable by statute.

By stat. 3 Edw. I. c. 25, no officer of the king, by himself, nor by other, shall maintain pleas, suits, or other matters hanging in the king's courts, for lands, tenements, or other things, for to have part or profit thereof, by covenant made between them; and he that doth shall be punished at the king's pleasure.

By Covenant made.]—That is, by agreement either by word or writing; for albeit, in the common sense, a covenant is taken for an agreement by writing, yet in a larger sense it is taken, (as it is here,) for an agreement by writing or by word. (2 *Inst.* 209.)

By stat. 28 Edw. I. c. 11, no person whatsoever, for to have part of the thing in plea, shall take upon him the business that is in suit, nor shall any upon such covenant give up his right to another; on pain that the taker shall forfeit to the king the value of the part he has purchased for such maintenance. But no person shall be prohibited hereby to have counsel of pleaders, or of men learned in the law, for their fee; or of his parents and next friends.

By stat. 33 Edw. I. st. 3, any person who shall take for maintenance or

the like bargain, any suit or plea against another, he and also they who consent thereto, shall be imprisoned three years, and make fine at the king's pleasure. (*Vide Tomlins's Statutes*, Vol. I. p. 225.) 2. *Of Champerty in particular.*

And by stat. 1 Rich. II. c. 9, a feoffment of lands, or gift of goods, for maintenance, shall be void, and the person disseised shall recover the lands against the first disseisors with double damages, without having any reg

III. Of Embracery of Jurors.

It seems clear, *that any attempt whatsoever to corrupt or influence or instruct a jury, or any way to incline them to be more favourable to the one side than to the other, by money, promises, letters, threats, or persuasions, is a proper act of embracery*, whether the juror on whom such attempt is made give any verdict or not, or whether the verdict given be true or false. (1 *Hawk.* c. 85, s. 1.) What it is.

And the law so far abhors all corruption of this kind, that it prohibits every thing which has the least tendency to it, what specious pretence soever it may be covered with; and, therefore, it will not suffer a mere stranger so much as to labour a juror to appear and act according to his conscience. (*Id.* c. 85, s. 2.)

But any person who may justify any other act of maintenance may safely labour a juror to appear and give a verdict according to his conscience; but no one whatsoever can justify the labouring a juror not to appear. (*Id.* c. 85, s. 6.)

There is no doubt but that offences of this kind do subject the offender either to an indictment or action, in the same manner as all other kinds of unlawful maintenance do by the common law. (*Id.* c. 85, s. 7.) How punishable by the common law.

By stat. 32 Hen. VIII. c. 9, ss. 3, 6, no person shall embrace any jurors on pain of 10*l.*, half to the king, and half to him that shall sue within a year. How by statute.

And by stat. 6 Geo. IV. c. 50, s. 61, embracers and corrupt jurors are made punishable by fine and imprisonment; see the section, Vol. III., *title "Jurors."* The 38 Edw. III. st. 1, c. 12, relative to the penalties for embracery, is repealed by that act.

Indictment for maintenance

——— } *The jurors for our lady the Queen upon their oath present, that A. O.,*
to wit. } *late of in the county of , yeoman, on the day of*
, in the year of the reign of our lady the now Queen Victoria, with force and arms, at the parish aforesaid, in the county aforesaid, did unjustly and unlawfully maintain and uphold a certain action which was then depending in the court of our said lady the Queen before the Queen herself, [or, *in C. P.* "*in the court of our lady the Queen before her justices of the Bench,*" or, "*in the Exchequer, in the court of our lady the Queen before the barons of her Exchequer, at Westminster.*"] *between A. P. plaintiff, and A. D. defendant, in an action of debt on the behalf of the said A. P. against the said A. D., contrary to the form of the statute in such case made and provided, and to the manifest hindrance and disturbance of justice, and in contempt of our said lady the Queen and her laws, and to the great damage of the said A. D., and against the peace of our said lady the Queen, her crown and dignity*

Malice, Express or Implied, *see* "*Homicide*," Vol. III.; when presumed, *post*, 14.

Malicious Injuries to the Person.

FOR other offences against the person not noticed under this title, *see titles*, "*Abduction*," "*Abortion*," "*Assault*," "*Children*," Vol. I., "*Homicide*," Vol III.; "*Polygamy*," "*Sodomy*," "*Rape*," Vol. V As to the offence of occasioning an injury by furious or wanton driving of stage coaches, *see* "*Stage Coaches and Post Horses*.' Vol. V

Herein of,

I. *The General Clauses of the 7 Will. IV. & 1 Vict. c. 85*, p. 6.
[*ss.* 1, 7, 8, 9, 10, 11, 12, 13.]

II. *Poisoning, Stabbing, Cutting, or Wounding, &c., with intent to Murder*, p. 8
[*s.* 2.]

III. *Attempt to Murder by Poisoning, Shooting, Drowning, Suffocating, &c.* p. 12.
[*s.* 3.]

IV. *Shooting, Stabbing, or Wounding, &c., with intent to do Bodily Harm, or Resist the Apprehension of an Offender, &c.* p. 14.
[*s.* 4.]

V. *Sending Explosive Substances, or Throwing Destructive Matter, with intent to do Bodily Harm, &c.* p. 19.
[*s.* 5.]

I. The General Clauses of the 7 *Will. IV.* & 1 *Vict* c 85.

Repeal of part of 9 Geo. IV. c. 31 (*a*), and 10 Geo. IV. c. 34.

By the 7 Wil IV. & 1 Vict c. 85, s. 1, after reciting that "Whereas it is expedient t amend so much of an act passed in the ninth year of the reign of king George the Fourth, intituled "An Act for consolidating and amending the Statutes in England relative to Offences against the Person." and also so much of an act passed in the tenth year of the same reign, intituled "An Act for consolidating and amending the Statutes in Ireland relating to Offences against the Person," as relates to any person who shall unlawfully and maliciously administer or attempt to administer to any person, or who shall cause to be taken by any person, any poison or other destructive thing, or who shall unlawfully and maliciously attempt to drown, suffocate, or strangle any person, or who shall counsel, aid, or abet therein; and so much of the same acts or either of them as relates

(*a*) The 9 Geo. IV. c. 31, repeals the various statutes in force before the passing of that act relative to offences against the person.

to any person who shall unlawfully and maliciously shoot at any person, or who shall, by drawing a trigger or in any other manner, attempt to discharge any kind of loaded arms at any person, or who shall unlawfully and maliciously stab, cut, or wound any person, or who shall unlawfully and maliciously throw or cast at or upon or otherwise apply to any person any corrosive or noxious liquid or substance, with any of the intents in the same acts mentioned, or who shall counsel, aid, or abet therein; and so much of the same acts as relates to any person who shall use any of the ways or means therein mentioned with intent to procure the miscarriage of any woman, or who shall counsel, aid, or abet therein; and so much of the same acts as relates to the punishment of accessaries after the fact to such of the felonies punishable under those acts as are hereinbefore referred to:" it is enacted, "That so much of the said acts as is hereinbefore referred to shall continue in force until and throughout the thirtieth day of September one thousand eight hundred and thirty-seven, and shall from and after that day be repealed, except as to offences committed before or upon the said thirtieth day of September, which shall be dealt with and punished as if this act had not been passed."

1. *The general Clauses of the 7 Will. IV. & 1 Vict. c. 85.*

Sect. 7. "That in case of every felony punishable under this act every principal in the second degree, and every accessary before the fact, shall be punishable with death or otherwise in the same manner as the principal in the first degree is by this act punishable; and every accessary after the fact to any felony punishable under this act shall, on conviction, be liable to be imprisoned for any term not exceeding two years."

Punishment of accessaries.

Sect. 8. "That where any person shall be convicted of any offence punishable under this act for which imprisonment may be awarded it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the court in its discretion shall seem meet."

Offences punishable by imprisonment.

Sect. 9. "That nothing in this act contained shall be construed to extend to the alteration or repeal of any of the powers, provisions, or regulations contained in an act made and passed in the fifth and sixth years of the reign of his late majesty king William the Fourth, intituled 'An Act for effecting greater Uniformity of Practice in the Government of the several Prisons in England and Wales, and for appointing Inspectors of Prisons in Great Britain,' or in an act made and passed in the fourth year of his majesty king George the Fourth, intituled 'An Act for consolidating and amending the Laws relating to the Building, Repairing, and Regulating of certain Gaols and Houses of Correction in England and Wales.'"

Not to affect powers of 5 & 6 Will. IV. c. 38, and 4 Geo. IV. c. 64.

Sect. 10. "That where any felony punishable under this act shall be committed within the jurisdiction of the Admiralty of England or of Ireland, the same shall be dealt with, inquired of, tried, and determined in the same manner as any other felony committed within that jurisdiction."

Offences within the Admiralty jurisdiction.

Sect. 11. "That on the trial of any person for any of the offences hereinbefore mentioned, or for any felony whatever, where the crime charged shall include an assault against the person, it shall be lawful for the jury to acquit of the felony, and to find a verdict of guilty of assault against the person indicted, if the evidence shall warrant such finding; and when such verdict shall be found, the court shall have power to imprison the person so found guilty of an assault for any term not exceeding three years."

Court may imprison for three years in certain cases.

Sect. 12 The act shall not extend to Scotland.

Sect. 13. The act shall commence on 1st October, 1837.

2. *Poisoning, &c with intent to Murder.*

II. Poisoning, Stabbing, or Wounding, &c., with intent to Murder.

Poisoning, stabbing, wounding, &c., with intent to murder.

By 7 Will. IV. & 1 Vict. c. 85, s. 2. "Whosoever shall administer to or cause to be taken by any person, any poison or other destructive thing, or shall stab, cut, or wound any person, or shall by any means whatsoever cause to any person any bodily injury dangerous to life, with intent in any of the cases aforesaid to commit murder, shall be guilty of felony, and being convicted thereof, shall suffer death."

This sentence of death may be recorded. (4 Geo. IV. c. 48.)

The offence is not triable at the quarter sessions. (5 & 6 Vict. c. 38, s. 1.)

If the intent to murder cannot be established, the defendant may still be found guilty of the assault. (7 Will. IV. & 1 Vict. c. 85, s. 11, *ante*, and see the other general clauses of this act, *ante*, 6.)

What a poisoning.

If a servant put poison into a coffee pot which contains coffee, and when her mistress comes down to breakfast, the servant tells the mistress that she has put the coffee pot there for her (the mistress's) breakfast, and the mistress drink the poisoned coffee, this was "a causing the poison to be taken" within the act, and the servant is therefore indictable under it. (*R.* v. *Harley*, 4 *C.* & *P.* 369.) It should also seem from the same case, that this is also an "administering" within the act; as, to constitute an administering, it is not necessary that the poison should be delivered by the hand of the party. And where the prisoner, having mixed corrosive sublimate with sugar, put it into a parcel, directing it Mrs. Daws, Townhope, and left it on the counter of a tradesman, who sent it to Mrs. Davis, who used some of the sugar, *Gurney*, B., held it to be an administering; for, although it was intended for Mrs. Daws, yet, as it found its way to Mrs. Davis, it was as much within the act as if it had been intended for Mrs. Davis. (*R.* v. *Lewis*, 6 *C.* & *P.* 161.) The prisoner was indicted on the 43 Geo. III. for *administering* poison to E. D. with intent to murder her. The proof was, that the prisoner gave her a bit of a cake which contained arsenic and sulphate of copper. She put this into her mouth and spit it out again, but did not swallow any part of it. This was held by the twelve judges not to be an administering within the meaning of the act, as the poison was not swallowed. (*R.* v. *Cauman, cor. Twelve Judges, Car. C. L.* 237 (*a*).) But such facts would, it should seem, make out a case of *attempting* to administer the poison within the meaning of the 3rd section of the act. In *Reg.* v. *Ryan*, 2 *M.* & *Rob.* 213, *Parke*, B., after consulting *Alderson*, B., expressed an opinion that an indictment for causing poison to be taken by A., with intent to murder A., was not sustained by evidence showing that the poison, though taken by A., was intended for another person; and doubted the propriety of the decision in *R.* v. *Lewis*: and accordingly, after the defendant had been convicted, he directed a fresh indictment to be preferred, changing the intent to be generally "to commit murder;" upon which the defendant was again tried, convicted, and sentenced.

What is stabbing, cutting, or wounding.

The word *stab* used in the act imports a wound made with a pointed instrument—the word *cut*, a wound with an instrument capable of cutting; but the word *wound* includes incised wounds, punctured wounds, lacerated wounds, contused wounds, and gun-shot wounds. (*Jerv. Arch. C. L.* 9 *ed.* 459.)

An incised wound must be proved; a mere contused or lacerated wound is not within the enactment. (*Jerv. Arch. C. L.* 9 *ed.* 456.) Where it appeared that the prisoner struck the prosecutor on the back of the head with a cavalry sword, which was, at the time, in a steel

(*a*) This case is also reported in *R.* & *M. C. C. R.* 114; but, according to *R.* v. *Harley*. (4 *C.* & *P.* 369), such report is inaccurate.

scabbard, and lacerated the skin of the head, which bled considerably, *Bayley*, J., held, that it was not a case within the statute 48 Geo. III. c. 58. (*R.* v. *Whitfield, Salop, Sum Ass.* 1822, 1 *Russ.* 597.) A blow with a square iron bar, which inflicted a contused or lacerated wound, was held not to be a cutting. (*R.* v. *Adams, Old Bailey, January Sessions*, 1808; 3 *Burn's J., 24th ed.* 374; 1 *Russel*, 597.) And, in a case before *Dallas*, C. J., and *Burton*, J., at Chester Assizes, it was ruled, that a blow with the handle of a windlass was not a cutting within the 43 Geo. III., though it made an incision. (*Anon.*, 5 *Ev. Col. Stat. part 5, c. 4, p.* 334, *n.* (2).) But where a cutting is inflicted by an instrument capable of cutting, that was within the stat. 43 Geo. III. c. 58, though done with an instrument commonly used to force open drawers, &c., and, though the intention was not to cut, but to do some other mischief. (*R.* v. *Haywood*, *R.* & *R. C. C. R.* 78.) And striking over the face with the claw part of a hammer was held to be a cutting. (*R.* v. *Atkinson, Id.* 104.) It is not necessary that the prosecutor should be cut in a vital part; for the question is not what the wound is, but what wound was intended. (*R.* v. *Hunt*, *R.* & *M.* 93; *R.* v. *Griffith*, 1 *C.* & *P.* 298.) To constitute a *wounding* within the statute, it is necessary that the continuity of the skin should be broken. Upon an indictment for wounding Best, it appeared that the defendants struck him with an iron sticking bar, wrenched from a block used for making pins, and with a hammer, giving him tremendous blows across his shoulders, on his loins, and on other parts of his body, and broke his collar bone, and injured the end of the bone, but there was no evidence of an incised wound, or that the skin was broken: *Park*, J., was of opinion, at the trial, that this was a wounding within the statute, the word wound being introduced for the purpose of destroying the distinction which it was necessary to make upon the repealed statute between incised and contused wounds: the defendants having been convicted, it was holden by nine judges, *Bayley*, *Park*, and *Garrow*, *contrà*, that this was not a wounding within the statute. (*R.* v. *Wood* & *M'Mahon*, *R.* & *M. C. C.* 278; 4 *C.* & *P.* 381, *S. C. And see R.* v. *M'Loughlin*, 5 *C.* & *P.* 635: *R.* v. *Becket*, 1 *M.* & *Rob.* 526.) If the skin be broken internally it will suffice. (*R.* v *Smith*, 8 *C.* & *P.* 173.) The nature of the instrument with which the injury is inflicted is immaterial. Thus a wound from a kick is within the statute. (*R.* v. *Briggs*, *R.* & *M. C. C.* 318.) And where, upon an indictment for stabbing, cutting, and wounding O. C. Codrington, it appeared that the defendant threw a finishing hammer, one end of which was round and flat, and the other end sharp, to draw out with, at the prosecutor, which struck him and wounded him on his nose, breaking the skin and leaving a scar on his nose an inch and a half long, but it did not appear which end of the hammer struck the prosecutor; upon a case reserved, whether this was a cut, stab, or wound, within the true construction of the statute, it was holden that the defendant was properly convicted. (*R.* v. *Withers*, *R.* & *M. C. C.* 294; 4 *C.* & *P.* 446, *S. C. See also R.* v. *Payne*, 4 *C.* & *P.* 558; *R.* v. *Shcard*, 7 *C.* & *P.* 846: 2 *Mood C. C.* 13, *S. C.*) On an indictment for wounding, the jury, upon the question whether if death had ensued the offence would have been murder, should consider whether the instrument employed was, in its ordinary use, likely to cause death; or, if it be an instrument not likely under ordinary circumstances to cause death, whether it was used in such an extraordinary manner as to make it likely to cause death, either by continued blows or otherwise. (*R.* v. *Howlett*, 7 *C.* & *P.* 274.) The wounding must be produced by some instrument, and not by the hands or teeth, &c. Therefore biting off the end of a person's nose is not a wounding within the act, nor is biting off a joint from a person's finger. (*R.* v. *Harris*, 7 *C.* & *P.* 446; *R.* v. *Stevens*, 1 *Mood. C. C.* 409; *R.* v. *Burrows*, *id.* 456.) The wounding must be produced by the defendant himself, and not be merely the result of a scuffle, or the like. (*R.* v. *Becket*, 1 *M.* & *Rob.* 526.)

2. *Poisoning, &c. with intent to Murder.*

As to what is "a bodily injury dangerous to life," it was holden that What a bodily

2. Poisoning, &c., with intent to Murder.

striking and kicking a child, knocking its head against a beam in the ceiling, and then throwing it down upon a brick floor, so as to cause a concussion of the brain, amounted to this offence, if proved to be done with intent to murder; but *Patteson*, J., held that there must be proof of a positive attempt to murder; merely proving that the act was done under circumstances that if death had ensued it would have been murder, would not be sufficient, if murder were not in fact intended. (*R.* v. *Cruse, et ux.* 8 *Car. & P.* 541.)

Injury dangerous to life.

The intent to murder.

The intent to *murder* must be collected from the circumstances of the case, and the conduct or expressions of the party; (*see title*, "*Homicide*," Vol. III.) If the intent be to do some grievous bodily harm, see the 4th section of the act, *post*, 14.

If it be questionable whether the shooting, &c. was by accident or design, proof may be given that, at another time, the prisoner intentionally shot at the same person. (*R.* v. *Voke, R. & R. C. C.* 531.) Also on an indictment for attempting to murder by poison, evidence of administering at different times may be given to show the intent. (*R.* v. *Mogg*, 4 *C. & P.* 364.)

In a case of stabbing, where the prisoner has used a deadly weapon, the fact that the prisoner was drunk does not at all alter the nature of the case; but if the prisoner had intemperately used an instrument not in its nature a deadly weapon at a time when he was drunk, the fact of his being drunk might induce the jury to less strongly infer a malicious intent in him at the time. (*R.* v. *Meakin*, 7 *C & P.* 297.)

The indictment, &c.

The indictment should state accurately the mode by which the injury is inflicted. An indictment for poisoning, with intent to murder, must allege the thing administered to be poisonous or destructive; and therefore an indictment for administering sponge mixed with milk, not alleging the sponge to be destructive, was holden bad. (*R.* v. *Powles*, 4 *C. & P.* 571.) Where the indictment was for *cutting*, and there was evidence of *stabbing only*, a conviction under these circumstances was held wrong. (*R.* v. *M'Dermot, R. & R.* 356.)

In an indictment for cutting, stabbing, or wounding, the instrument or means by which the wound was inflicted need not be stated, and, if stated, the statement does not confine the prosecutor to prove a wound, &c. by such instrument or means. (*R.* v. *Briggs, R. & M. C. C.* 318.) Upon an indictment which charged a wound to have been inflicted by striking with a stick and kicking with the feet, proof that the wound was caused either by striking with a stick or kicking was holden sufficient, though it was uncertain by which of the two the injury was inflicted. (*Id.*)

On an indictment for shooting with intent to murder, if it be alleged that the gun was loaded with powder and a bullet, it must be proved to have been loaded with a bullet, otherwise the defendant must be acquitted. (*R.* v. *Hughes*, 5 *C. & P.* 126.)

In an indictment for causing bodily injury with intent to murder, it is not necessary to state the nature of the bodily injury occasioned; and if it were, that would be sufficiently done by the statement of the means whereby it was inflicted. (*Reg.* v. *Cruse*, 2 *Mood. C. C.* 53; 8 *C. & P.* 541.)

The intent should be correctly laid, see the instances of variances, &c., *post*, 17, 18.

There does not seem any objection to insert counts on the 3rd and 4th sections; and it is in all cases advisable, where it is doubtful whether the prisoner intended to murder or merely to maim. (*See R.* v. *Strange*, 8 *Car. & P.* 172.)

The statute makes no difference in the crimes mentioned specifically and the being present aiding and abetting. Therefore the same indictment may contain counts with reference to either offence. (*R.* v. *Towle and others, R. & R.* 314.) And if an indictment for shooting at another charge that a person unknown feloniously, &c., did shoot at A. B., and

that the prisoner and others were *present*, aiding and abetting, &c., the said unknown person, the *said felony* to do and commit, &c., this is sufficient, without its being stated that the prisoner was *feloniously* present, &c. (*R.* v. *Towle and others*, *R. & R.* 314; *Collyer's Stat.* 12.)

2. *Poisoning, &c., with intent to Murder.*

(1.) Commitment for poisoning with intent to murder.

—— (The county wherein the commitment is made.) *J. P. esquire, one of her majesty's justices of the peace for the said county, to the constable of , in the said county, and to the keeper of the common gaol at , in the said county.*

These are to command you the said constable, in her majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol the body of C. D., charged this day before me the said justice, on the oath of A. B. of , and others, for that he the said C. D. on the day of , A.D. , at the parish of , in the said county, feloniously did administer to [or "*cause to be taken by*"] *one A. B., a large quantity of a certain poison* [any poison or other destructive thing,] *called arsenic, with intent then and there, and thereby, feloniously, wilfully, and of his malice aforethought, the said A. B. to poison, kill, and murder; against the form of the statute in that case made and provided. And you the said keeper are hereby required to receive the said C. D. into your custody in the same* [common gaol], *and him there safely to keep until he shall be thence delivered by due course of law. Herein fail you not. Given under my hand and seal, the day of , in the year of our Lord*

J. P.

(2.) Commitment for attempt to murder by stabbing.

Commencement as *supra*,]—*on the day of* , A.D. , *at the parish of , in the said county, unlawfully, maliciously, and feloniously did stab and wound* [stab, cut, or wound,] *one A. B., in and upon the left side of the body of the said A. B., with intent, in so doing, &c.* [Conclude as *supra*.]

(3.) Indictment for administering poison with intent to murder.

——] *The jurors for our lady the Queen upon their oath present, that C. D., late of the parish of , in the county of , labourer, on the day of , in the year of the reign of our lady the now Queen Victoria, with force and arms, at the parish aforesaid, in the county aforesaid,* feloniously and unlawfully did administer to* [or, "*cause to be taken by*"] *one A. B., a certain quantity of a certain deadly poison called arsenic, to wit, two drachms of the said arsenic* [or, "*a certain destructive thing called savin, to wit, two ounces of the said thing called savin,*"] *with intent then and there, and thereby, feloniously, wilfully, and of his malice aforethought, the said A. B. to poison, kill, and murder; against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.* [Add other counts as the case may suggest, varying the statement of the nature of the attempt or the thing administered. Add a count stating it to be "*a certain destructive thing to the jurors aforesaid unknown.*"]

(4.) Indictment for stabbing, &c., with intent to murder.

[As, *supra*, No 3, to the *, and then thus.]—*one A. B., in and upon the right groin of him the said A. B., then and there feloniously and unlawfully did stab, cut, and wound, with intent*, &c., as in the preceding form.

(5.) Indictment for doing a bodily injury with that intent.

[As, *supra*, No. 3, to the *, and then thus.]—*feloniously did cause unto A. B., a certain bodily injury dangerous to life, by then and there feloniously* [state the act done], *with intent, in so doing, him the said A. B., then and there, and thereby feloniously, wilfully, and of his malice aforethought, to kill and murder, and thereby then and there did grievously injure the said A. B. in his body; against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.*